IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.979 OF 2002
IN
SUMMARY SUIT NO.1773 OF 2002

M/s.Bharwani Bros.& Co. ..Plaintiffs
Vs.
Vasant Bhagwatiprasad Anil & anr. ..Defendants

Mr.Prem S. Gidwani, Adv. for Plaintiffs
Mr.M.J.Dalwani, Adv. for Defendants

CORAM: V.M. KANADE, J.
DATE: 18TH AUGUST, 2004.

P.C.

1. Heard learned Counsel appearing on behalf of the Plaintiffs and Defendants. The Plaintiffs have filed the suit for the recovery of Rs.32,38,000/- with interest on the principle amount of Rs.16,00,000/- at the rate of 24% p.a. The Plaintiffs have lent and advanced to the Defendants sum of Rs.17,00,000/- by an agreement dated 5th November, 1998 and there was a written agreement which is signed by the Defendant No.1 and 2 and subsequent agreement dated 14th July, 2004 also was made in which a promise in para no.9 of the second agreement confirmed the liability which was due and liable to the Plaintiffs by the Defendant Nos.1 and 2. Both the Defendants had in unequivocal terms agreed that they are jointly and severally liable to be paid to the Plaintiffs. The Counsel appearing on behalf of the Plaintiffs has taken me to the said two agreements at Exhibit "A" and Exhibit "B". It is submitted that at the virtue of reading agreement the Defendants are liable to pay the amount.

2. The learned Counsel appearing on behalf of the Defendants submitted that Defendants 1 and 2 are separate entities and as such there cannot be joinder of two different concerns of Account and on that ground the suit itself is not maintainable. He further submitted that suit was not maintainable as Summary Suit. No averments in respect of that has been made in the plaint. It is further submitted that so far as the agreements which were relied upon by the Plaintiffs. Stamp paper was issued in favour of some third party and therefore, the said document is not valid. He further submitted that the rate of interest is not agreed. He relied on the Judgment in A.I.R. 2001 Mafatlal Firm Vs. Express Industrial Pvt. Ltd. I am unable to accept the submissions made by the learned Counsel appearing on behalf of Defendants. In Exhibit "C" and Exhibit"D" it is seen that both the Defendants, whatever stated categorically mentioned that they are jointly and severally liable for the suit, for the purpose of such written agreement, it is not open to the Defendants to say that they are separate entities. The rate of interest also is confirmed in the said agreement particularly in para no.9 of the said agreement. The question whether the said agreement is admissible or not can arise at the final hearing of the suit. So far as the Judgment relied by the learned Counsel in the case of Mafatlal Vs. Express

Industrial Pvt. Ltd. Supra is concerned this Judgment has been over ruled by subsequent Full Bench of this Court.

3. In the result the Defendants are directed to deposit an amount of Rs.17,00,000/- within a period of 20 weeks. Conditional leave to Defendants is granted on their depositing said amount of Rs.17,00,000/- in the event of said amount is not deposited Plaintiff is entitled to apply for Decree as prayed in the plaint.

. C.C. expedited.

JUDGE